

ORIGINAL

People's
Choice-TV®

EX PARTE OR LATE FILED

July 24, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Amendment of Parts 21 and 74 To Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage In Fixed Two-Way Transmissions -- MM Docket No. 97-217 and RM-9060: EX PARTE COMMUNICATION*

Dear Ms. Salas:

I am writing to alert the Commission that People's Choice TV Corp. ("PCTV") shares the concerns recently expressed by BellSouth Corp. and by the more than 110 parties that submitted the Petition for Rulemaking commencing (the "Petitioners") this proceeding regarding the proposal by Catholic Television Network ("CTN") that the licensee of every nearby Instructional Television Fixed Service ("ITFS") station be notified of the specific location of each new response station that is installed. Simply stated, adoption of the CTN proposal would impose unnecessary competitive harm upon PCTV and others who are attempting to develop viable wireless broadband service offerings in the marketplace.

At the outset, it should be emphasized that PCTV is sensitive to the concern that response stations not cause harmful interference. PCTV has already launched high-speed Internet access services in Detroit and Phoenix under the SpeedChoice name, and must ensure that its customers, as well as its ITFS partners, do not suffer interference. If CTN's proposal significantly advanced the cause of preventing interference, PCTV would support it. However, it does not, so PCTV is supportive of the Petitioners' various proposals for minimizing the risk of interference, which we believe are fully protective against interference, without unduly ham-stringing licensees from deploying two-way services.

CTN's "notification zone" proposal is designed to address the slight potential for downconverter overload by assisting ITFS licensees in identifying the source of any interference. Of course, the Petitioners long ago agreed that the licensee of any facility causing overload interference should be required to cure that interference -- the debate is solely over whether draconian burdens should be imposed on licensees before they can deploy a response station.

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CTN's proposal is, as the Petitioners put it, "a solution in search of a problem." Using PCTV's licensed two-way system in Phoenix as a model, the Petitioners have provided the Commission with detailed studies establishing under "real world" conditions, downconverter overload is likely to be a potential problem less than 0.01% of the time. The Petitioners have identified a variety of techniques for avoiding interference that can be employed prior to inaugurating service, including cross-polarization of facilities, the provision of improved downconverters and the addition of filtering at ITFS receive sites, and CTN has never refuted the Petitioners' contention that these techniques can be effectively used to cure interference.

Nonetheless, the Petitioners have agreed to accept a requirement that the licensee of a response station hub notify surrounding MDS and ITFS licensees prior to inaugurating service from that hub. This, of course, is in addition to the requirement that the applicant for a two-way authorization file an application that would appear on public notice at least 60 days before the application could be granted. Thus, every MDS and ITFS licensee will know beforehand when a two-way system is about to be launched near its operating area. As a result, any MDS and ITFS licensee suddenly suffering interference due to downconverter overload should have no difficulty identifying the licensee responsible.

Moreover, the rules proposed by the Petitioners to address block downconverter interference mandate that the licensee of a response station be required to disclose the location of individual response stations as part of its obligation to cooperate *if* any interference occurs. In other words, there is no debate that the location of specific response station should be disclosed when necessary to cure actual interference. The debate is whether the Commission should not only require the disclosure of the hub activation in all cases, and the disclosure of specific response station sites when interference is caused, but should also require the disclosure of the location of all response stations installed in the vicinity of ITFS receive sites even when no overload interference is caused.

From its substantial experience as a video and high-speed data service provider, PCTV can assure the Commission that a service provider's customer list is as proprietary a piece of information as exists. As BellSouth Corp. correctly noted in its July 2, 1998 filing, "CTN's notion of sending lists of subscriber locations to third parties raises serious subscriber privacy and competition concerns." PCTV can provide the Commission with a "real world" example of why this is the case. In one of the major markets where PCTV hopes to deploy a two-way high-speed wireless broadband service, an ITFS licensee recently started making capacity available for a competing high-speed Internet access service. If CTN's proposal were adopted, PCTV would be required to disclose the location of two-way PCTV customers to this ITFS licensee. CTN has failed to address the potential impact of such a disclosure, much less suggest an effective mechanism the Commission can adopt to prevent that ITFS licensee (and its lessee) from utilizing this highly-sensitive information for its own competitive advantage. That failure, however, is not

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surprising, for there is nothing the Commission can do to provide an absolute safeguard against abuse.

For this reason, PCTV urges the Commission to adopt the Petitioners' approach to the problem – an approach that provides the ITFS community with all of the information a licensee needs to identify the likely source of interference, without requiring the unnecessary disclosure of competitively sensitive information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Oristano", written in a cursive style.

Matt Oristano
Chairman/CEO

cc: Hon. William E. Kennard
Hon Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael K. Powell
Hon. Gloria Tristani
Susan Fox
Jane Mago
Anita Wallgren
Helgi Walker
Rick Chessen
Roy Stewart
Keith Larson
Barbara Kreisman
Charles Dziedzic